

DEPARTMENT OF STATE REVENUE

04-20130620.LOF

Letter of Findings Number: 04-20130620
Sales Tax
For Tax Years 2007-2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE**I. Sales Tax - Liability.**

Authority: IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-2-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-2.5-13-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); [45 IAC 2.2-1-1](#); [45 IAC 2.2-2-1](#); [45 IAC 2.2-2-2](#).

Taxpayer protests the imposition of additional sales tax.

STATEMENT OF FACTS

Taxpayer is an S corporation domiciled in the state of Kentucky that manufactures, sells, and installs a variety of signs, some in the state of Indiana. The Indiana Department of Revenue ("Department") conducted an audit and found that Taxpayer failed to collect and remit Indiana sales tax. The Department issued proposed assessments of additional sales tax, penalties, and interest. Taxpayer protests the proposed assessment of sales tax. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Sales Tax - Liability.**DISCUSSION**

Taxpayer protests the Department's proposed assessment of additional sales tax resulting from an audit. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1. Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched" IC § 6-2.5-1-27. Retail sales of products are sourced "to the location where receipt by the purchaser . . . occurs" if it is not transferred at the retail merchant's place of business. IC § 6-2.5-13-1(d). Where the retail merchant delivers the tangible personal property to an Indiana address, "[t]he retail merchant shall collect the tax as agent for the state." IC § 6-2.5-2-1(b); [45 IAC 2.2-2-2](#).

Transactions that include tangible personal property and services "which are furnished under a single order or agreement and for which a total combined charge or price is calculated" are retail unitary transactions. IC § 6-2.5-1-1(a). The tax on retail unitary transactions is "measured by the gross retail income received by a retail merchant" IC § 6-2.5-2-2(a). The gross retail income received is the total value of the purchase price without deductions for, among others, "(1) the seller's cost of the property sold; (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (4) delivery charges" IC § 6-2.5-1-5(a); see [45 IAC 2.2-1-1](#). The gross retail income does not include, among other charges, taxes, installation charges, or postage charges if these charges are separately stated on the invoice or bill of sale. IC § 6-2.5-1-5(b). Consequently, the gross retail income may include taxes, installation charges, or postage if these charges are not separately stated on the invoice or bill of sale. *Id.*

"Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Such records include "all source documents necessary to determine the tax" Id. If the Department cannot determine a taxpayer's liability based on the books and records provided and it reasonably believes that the taxpayer has not reported the proper amount of tax due, the Department will propose an assessment of unpaid tax based on the best information available. IC § 6-8.1-5-1(b).

Taxpayer states that several items of the original source documentation used during the audit "were not taken into consideration." Taxpayer appears to argue that the auditor did not review a "log of all exempt buyers and locations of delivery." Although Taxpayer agrees with the auditor's method of determining gross sales by using the best information available, it argues that the auditor "failed to accurately account for the exclusion of exempt sales based on the original customer order and based on the audit on [sic] final invoice which lacked detail included on purchase orders." Taxpayer states it found "inconsistent treatment of taxable and non-taxable sales."

Taxpayer does not dispute that it is subject to Indiana's sales tax, a listed tax. Pursuant to IC § 6-8.1-5-4(a), it must keep sufficient records for the Department to be able to determine the amount of Taxpayer's tax liability. According to the audit report, Taxpayer provided "minimal records." The auditor reviewed the records provided and recognized that they did not adequately identify the job location for each sale. The auditor conducted Internet research to supplement the records. Where this additional research was inconclusive, the auditor minimized the impact of the audit by assessing sales tax on the lesser of two amounts or applying a percentage to the total taxable amount before assessing tax. The auditor also recognized that the information provided by Taxpayer "frequently included multiple entries for some invoices." These entries were accounting for discounts as well as the total price. The auditor "carefully review[ed] all invoices to determine the actual total sale amount as well as the taxable portion." In his review, the auditor accounted for installation charges that were separately stated on invoices.

The audit report did not mention a "log of all exempt buyers and locations of delivery;" however, Taxpayer did not provide a copy of this log for review during the protest process. Taxpayer provided some copies of "missing invoices" after the audit's final conference, which the auditor reviewed and used to adjust the final proposed assessments. Also, during the protest process, Taxpayer provided exemption certificates and copies of missing invoices. These were reviewed by the Audit Division prior to the hearing. The Audit Division adjusted the proposed assessments to account for the invoices which showed non-taxable transactions. The Audit Division rejected the exemption certificates because they were signed after the transaction occurred (post-dated). Taxpayer did not provide any additional documentation after the administrative hearing was held.

In this case, the auditor relied on the documentation provided by the Taxpayer to the greatest extent possible. He did additional research to determine the taxable status of transactions as well as carefully reviewed the documentation presented to avoid including the same transaction more than once. The auditor and the Audit Division reviewed additional documentation provided by Taxpayer and adjusted the proposed assessments accordingly. Ultimately, however, Taxpayer's documentation was inadequate to appropriately determine Taxpayer's tax liability, and the Department reasonably believed that Taxpayer did not report the proper amount of tax due. The Department properly proposed an assessment of unpaid tax based on the best information available to the Department, and Taxpayer has not demonstrated otherwise. Taxpayer has not met its burden to prove that the proposed assessment is incorrect, and its protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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